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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,184	10/18/2001	Jean-Louis H. Gueret	08048.0019-00	5423
22852	7590	05/25/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			LE, HUYEN D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/981,184

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33,35-126,128-142 and 160-188 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☒ Claim(s) 61-73,84-92 and 134-142 is/are allowed.
- 6) ☒ Claim(s) 1-10,16,17,19,23,24,27-33,35,38,52,53,60,93-101,103,104,109,110,112,116,117,120-126,128-130,160-164,166,167,169,170,173,175-185,187,188 is/are rejected.
- 7) ☒ Claim(s) 165,168,171,172,174 and 186 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 11-15,18,20-22,25,26,36-51,54-59,74-83,102,105-108,111,113-115,118,119 and 131-133.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless--

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 16, 17, 19, 23, 27, 35, 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett (4,974,981).

Regarding claim 1, the Bennett reference discloses a device comprising: a receptacle 30 containing a cosmetic product 58 and including a housing 24; a removable unit 22 defining a substantially enclosed space (inside members 34,36), at least part of the removable unit 22 configured to be removably received in a housing 24, the removable unit 22 being configured to be removed from the housing 24 while the unit defines the substantially enclosed space; an application element configured to be housed within the substantially enclosed space defined by the removable unit when the application element 32 is not in use, the application element configured to be loaded with product from the receptacle 30 when the removable unit 22 is positioned on the receptacle 30.

Regarding claim 3, the application element 32 is configured to hold a reserve a product.

Regarding claim 16, the removable unit comprises an endpiece 36 configured to cooperate with a portion 24 of the receptacle 30.

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Regarding claim 17, the endpiece 36 is configured to cooperate with the pump 28.

Regarding claim 19, the member 24 of the receptacle 30 includes an end opening defining an orifice for flowing the product into the removable unit 22, wherein the bottom annular wall of member 24 defining a sealing member configured to establish leakproof connection between the removable unit 22 and the orifice of member 24.

Regarding claim 23, the removable unit 22 comprises a wall 36 including a top opening defining an orifice configured to flow the product therethrough.

Regarding claim 27, the application element 32 is made of a non-compressible material.

Regarding claim 35, the housing 24 comprises a wall for guiding movement of the removable unit while it is placed in position on the receptacle.

Regarding claim 38, the receptacle 30 defines an orifice 54 (located in spray head 26) configured to be actuated by the removable unit.

3. Claims 1-4, 6-8, 16, 19, 23, 24, 30, 31, 35, 38, 52, 53, 60, 93-99, 109, 112, 116, 117, 123, 124, 160, 161, 163, 166, 170, 173, 176, 179, 180, 182, 185 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemoine (1,818,340).

Regarding claims 1, 60, 93, 160 and 161, the Lemoine reference discloses a device for applying a product comprising: a receptacle g containing a cosmetic product f and including a housing; a removable unit a (with a lid e) defining a substantially enclosed space, at least part of the removable unit a configured to be removably

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received in a housing, the removable unit a being configured to be removed from the housing of the receptacle g while the unit a defines the substantially enclosed space; a non-bristled application element d configured to be housed within the substantially enclosed space defined by the removable unit a when the application element d is not in use, the application element d having a surface configured to be loaded with the product f from the receptacle g when the removable unit a is positioned on the receptacle g, the surface facing the receptacle g when the removable unit a is positioned on the receptacle g during loading of the application element d with the product f.

Regarding claims 2 and 95, a portion of the application element is porous.

Regarding claim 3, the application element is configured to hold a reserve of product.

Regarding claim 4, the removable unit a comprises a first portion a and a second portion e that are removably engageable with one another.

Regarding claims 6 and 98, the first portion a and second portion e are engageable in a substantially leakproof manner.

Regarding claim 7, the second portion e includes a downwardly extending flange (engaged with an annular shoulder of member a) constituting a sealing member.

Regarding claims 8 and 99, the downwardly extending flange of the second portion e constitutes a sealing skirt configured to press in a substantially leakproof manner against the first portion a.

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Regarding claims 16 and 109, the removable unit comprises an annular flange (engaged at the member h) constituting an endpiece configured to cooperate with a portion of the receptacle.

Regarding claims 23 and 116, the removable unit a comprises a wall b defining an orifice c configured to flow the product therethrough.

Regarding claims 24 and 117, the wall b defines a bottom of the space containing the application element d when the removable unit a is positioned on the receptacle g.

Regarding claims 30 and 123, the application element d is made of a compressible material.

Regarding claims 31 and 124, the application element d is made of an elastically deformable material.

Regarding claim 35, the housing comprises a wall for guiding movement of the removable unit a while it is placed in position on the receptacle g.

Regarding claim 38, the receptacle g include a top opening defining an orifice configured to be in flow communication with the product in the receptacle a.

Regarding claim 52, the application element d occupies a portion of the space when the product is not loaded and is configured to expand within the space upon being loaded with the product.

Regarding claim 53, the removable unit is configured to be placed in a closed position in which access to the space is substantially prevented and an open position in which access to the space is permitted.

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Regarding claim 94, the first portion a and second portion e are configured to be separated from one another when the removable unit is in the open position.

Regarding claim 96, the application element d is configured to hold a reserve of product.

Regarding claim 97, with no specific structure of a snap-fastening defined, the engagement between the first portion a and the second portion e is considered as a snap-fastening.

Regarding claims 19 and 112, the receptacle includes a top opening defining an orifice, and wherein the device further comprises a collar h defining a sealing member configured to establish a substantially leakproof connection between the removable unit and the orifice.

Regarding claims 166, 173, 179 and 185, the application element d is not immersed in the product contained in the receptacle when the removable unit a is received in the housing.

4. Claims 128-130, 160, 161, 178, 180-184 and 187 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1020135.

The EP 1020135 reference discloses a device for applying a product comprising a removable unit 14 (with a cap 23) defining a substantially enclosed space and being configured to be removably positioned on a receptacle 2 containing a product, the removable unit 14 comprising a first portion 15 configured to removably engage with a portion of the receptacle 2, and a second portion 23 configured to cooperate with the first portion 14 so as to place the removable unit 14 in one of a closed position so as to

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substantially restrict access to the space and an open position so as to permit access to the space, and an application element 25 configured to be received in the substantially enclosed space when the application element 25 is not in use for applying product, wherein the application element 25 is secured to the second portion 23, wherein removable unit is configured to be removably positioned on a receptacle having a dispensing member 10 on a portion of the receptacle 2 separate from a portion on which the removable unit 14 is configured to be positioned.

Regarding claim 129, the application element 25 occupies a portion of the space when the product is not loaded and is configured to expand within the space being loaded with the product.

Regarding claim 130, the receptacle comprises a housing in which part of the removable unit is configured to be removably received, one receptacle being configured to contain a product to be applied.

Regarding claims 178 and 184, the device further comprises a valve 10 configured to control the product flow between the receptacle 2 and the removable unit 14.

Regarding claim 183, the application member 25 is connected to a portion 23 of the removable unit 14.

Regarding claim 187, the device comprises a first wall 18 defining a bottom portion of the removable unit 14 and a second wall 8 extending across a neck 8 of the receptacle housing.

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5. Claims 1, 3-10, 16, 17, 19, 23, 24, 27, 35, 38, 52, 53, 93, 94, 96-101, 103, 104, 109, 110, 112, 116, 117, 120, 163, 166, 167 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis (882,668).

Regarding claims 1 and 93, the Davis reference discloses a device comprising: a receptacle H containing a care product and including a housing (top portion); a removable unit A defining a substantially enclosed space, at least part of the removable unit A configured to be removably received in a housing (Fig. 4), the removable unit A being configured to be removed from the housing while the unit A defines the substantially enclosed space; an application element F configured to be housed within the substantially enclosed space defined by the removable unit A when the application element F is not in use, the application element F configured to be loaded with product from the receptacle H when the removable unit A is positioned on the receptacle H, wherein the application element F comprises a surface configured to apply the loaded product, the surface facing the receptacle when the removable unit H is positioned on the receptacle H during the loading of the application element F with the product.

Regarding claims 3 and 96, the application element is configured to hold a reserve product.

Regarding claims 4, 94 and 103, the removable unit A comprises a first portion A and a second portion B that are removably engageable with one another.

Regarding claims 5 and 97, the first portion A and the second portion B are removable engageable by screw fastening (similarly shown in Figure 1).

Regarding claims 6 and 98, the first portion A and second portion B are engageable in a substantially leakproof manner.

Regarding claim 7, the second portion B includes a downwardly extending flange constituting a sealing member.

Regarding claims 8 and 99, the downwardly extending flange of the second portion B constitutes a sealing skirt configured to press in a substantially leakproof manner against the first portion A.

Regarding claims 9 and 100, the application element F is secured to the second portion B.

Regarding claims 10 and 101, the portion E to which the application F is secured is configured as a handle member configured to be held during application of the product.

Regarding claims 16 and 109, the removable unit A comprises an end portion defining an endpiece configured to cooperate with a (top) portion of the receptacle H.

Regarding claims 17 and 110, the endpiece is configured to cooperate with a neck portion associated with the receptacle H (Fig. 3).

Regarding claims 19 and 112, the receptacle H includes an end opening defining an orifice for flowing the product into the removable unit A, wherein the top annular wall of member H defining a sealing member configured to establish leakproof connection between the removable unit A and the orifice.

Regarding claims 23 and 116, the removable unit comprises a wall defining an orifice a2 configured to flow the product therethrough.

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Regarding claims 24 and 117, the wall a defines a bottom of the space containing the application element F when the removable unit A is positioned on the receptacle H.

Regarding claims 27 and 120, the application element F is made of a non-compressible material.

Regarding claim 35, the housing comprises a (top annular) wall for guiding movement of the removable unit A while it is placed in position on the receptacle.

Regarding claim 38, the receptacle H include a top opening defining an orifice configured to be in flow communication with the product in the receptacle H.

Regarding claim 52, the application element F occupies a portion of the space when the product is not loaded and is configured to expand within the space upon being loaded with the product.

Regarding claim 53, the removable unit A is configured to be placed in a closed position in which access to the space is substantially prevented and an open position in which access to the space is permitted.

Regarding claim 104, the first portion A defines an orifice A2 configured to permit flow of the product for loading the application element F when the removable unit A is receiving in the housing.

Regarding claim 163, the product is configured to be applied to hair.

Regarding claim 166, the application element F is not immersed in the product contained in the receptacle when the removable unit A is received in the housing.

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Regarding claim 167, the removable unit is separated from the product contained in the receptacle H when the removable unit A is received in the housing.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemoine (1,818,340) in view of Smith (1,028,618).

Although the Lemoine reference does not disclose that the first portion a and the second portion e (lid) are removably engageable by screw fastening, attention is directed to the Smith reference which discloses another powder box which including a lid 6 engageable with the bottom portion 7 by screw fastening.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made provide threads on the lid and portion a of Lemoine device in view of the teaching of the Smith for better securing the lid to the box.

8. Claims 27-29, 32, 33, 120-121, 125, 126, 169, 177 and 188 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemoine (1,818,340).

Although the Lemoine reference does not disclose that the application member d is made of sintered material, foam, flocked pad, woven fabric pad, or non-woven fabric pad, or other materials, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select any of such material for different use as

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desired, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

9. Claim 162 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemoine.

Although the Lemoine reference does not disclose that the product is perfume, it is common that face powder includes perfume. It would have been obvious to one of ordinary skill in the art at the time the invention was made provide a perfume power in the Lemoine device for enhancing fragrance for a user, wherein so doing would be a matter of obvious design choice.

10. Claims 164, 175, 181 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemoine (1,818,340) in view of Mitchell (2,122,350).

Although the Lemoine reference does not show that length of the receptacle g (or reservoir) longer than the length of the removable unit, attention is directed the Mitchell reference which discloses another powder box comprising a receptacle (reservoir) having a length longer than the removable unit 7.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made provide the Lemoine device with a longer length receptacle in view of the teaching of the Mitchell reference for increasing the storage of the product.

11. Claim 181 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1020135.

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Although the EP reference does not show that length of the receptacle 2 (or reservoir) longer than the length of the removable unit 14, it would have been obvious to one of ordinary skill in the art at the time the invention was made provide the Lemoine device with a longer length receptacle for increasing the storage of the product, wherein doing so would be a matter of obvious design choice.

12. Claims 177 and 188 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1020135.

Although the EP 1020135 reference does not disclose that the application element comprise a flocking material, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select such material for different use as desired, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

13. Claim 164 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (882,668).

Although the Davis reference does not show that length of the receptacle 2 (or reservoir) longer than the length of the removable unit 14, it would have been obvious to one of ordinary skill in the art at the time the invention was made provide the Davis device with a longer length receptacle for increasing the storage of the product, wherein doing so would be a matter of obvious design choice.

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Allowable Subject Matter

14. Claims 165, 168, 171, 172, 174 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claims 61-73, 84-92, 134-142 allowed.

Response to Arguments

16. Applicant's arguments with respect to claims 1, 60, 93, 128, 160, 161 on 01/10/2005 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Michell and Krank references show an application device having a removable unit housing an applicator and disposed on a receptacle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Huyen Le
Examiner
Art Unit 3751

HL
May 24, 2005